

Exhibit 3

**Scharf-Norton Center for Constitutional Litigation at the
GOLDWATER INSTITUTE**

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

NATIONAL LABOR RELATIONS)
BOARD,)

Plaintiff,)

vs.)

STATE OF ARIZONA,)

Defendant.)

**AFFIDAVIT OF TIMOTHY F.
MOONEY**

AFFIDAVIT OF TIMOTHY F. MOONEY

Timothy F. Mooney, being duly sworn, states as follows:

1. I am an adult citizen of the State of Arizona and fully competent to attest
to and have direct knowledge of the facts contained in this affidavit.

2. I am national coordinator of SOS Ballot Inc. (Save Our Secret Ballot),
which is a nonprofit corporation organized under section 501(c)(4) of the federal
internal revenue code. Save Our Secret Ballot was established in December 2008.

3. The mission of Save Our Secret Ballot is to educate the American public
on the continued need for a secret ballot for elections under state or federal law,
including union recognition. The principal activity of Save Our Secret Ballot is to

1 place on state election ballots and secure voter approval of constitutional
2 amendments to secure the right to secret ballot.

3 4. In 2009-10, Save Our Secret Ballot was the principal catalyst for
4 legislative referral and popular enactment of secret ballot constitutional
5 amendments in four states: Arizona, South Carolina, South Dakota, and Utah. The
6 amendments were passed in all four states with between 60 to 86 percent of votes
7 in favor.
8

9 5. On May 11, 2011, following lobbying efforts by Save Our Secret Ballot,
10 Indiana adopted a statute guaranteeing the right to secret ballot in union
11 recognition elections.
12

13 6. Save Our Secret Ballot presently is actively engaged in promoting
14 measures protecting the right to secret ballot by referendum or initiative for the
15 November 2012 ballot in seven more states: Alabama, California, Florida,
16 Missouri, New Hampshire, Ohio, and Tennessee.
17

18 7. Save Our Secret Ballot drafted the language upon which all of the
19 enacted and proposed measures are based, including the Arizona amendment that
20 is the subject of this litigation. Save Our Secret ballot was granted intervention to
21 defend the certification of the Arizona amendment for the November 2010 ballot
22 in *McLaughlin v. Bennett*, 238 P.3d 619 (Ariz. 2010).
23

24 8. In the course of developing and promoting the measures, Save Our
25 Secret Ballot acquired substantial expertise on relevant legal issues, including the
26 federal pre-emption issues presented in this lawsuit as well as affirmative
27
28

1 constitutional defenses that are necessary for a comprehensive determination of
2 those issues.

3
4 9. In addition to this lawsuit, the National Labor Relations Board (NLRB)
5 has announced a similar challenge to the South Dakota secret ballot amendment.
6 According to press reports, the NLRB has reserved the possibility of challenging
7 the amendments in other states as well.

8
9 10. Should the NLRB's actions be successful, they would thwart Save Our
10 Secret Ballot's core mission, negate its successful efforts thus far, and impair
11 ongoing and future efforts to advance its mission.

12
13 11. If granted intervention, Save Our Secret Ballot intends to vigorously
14 defend the challenged amendment and resist efforts to narrow its protection of
15 essential rights.

16 I swear under penalty of perjury that the foregoing facts are true and
17 correct.

18
19
20 
Timothy F. Mooney

21 Executed this 26 day of May, 2011

22
23
24
25 Signed and sworn to before me by the above stated person on May 26, 2011.

26
27 
28 Notary Public

